



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David E. Frulla, Esq.
Kelley Drye & Warren LLP
Washington Harbor, Suite 400
3050 K Street, NW
Washington, DC 20007

DEC 19 2014

RE: MUR 6275
Joseph Racalto

Dear Mr. Frulla:

On April 23, 2010, the Federal Election Commission (the "Commission") notified your client, Joseph Racalto, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, information supplied by your client, and other available information, the Commission, on December 8, 2014, voted to dismiss the allegation against Mr. Racalto. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Ana J. Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

RESPONDENTS: Joseph Racalto

MUR 6275

FACTUAL AND LEGAL ANALYSIS

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The Complaint alleges that Joseph Racalto, former Congressman Eric Massa's Congressional Chief of Staff, violated the Act in connection with a \$40,000 payment from Massa's campaign committee, Massa for Congress (the "Committee") to Racalto on March 4, 2010 for a "campaign management fee." The Complaint also asserted that Racalto either may not have performed sufficient work to justify the amount of the payment or had "obtained [the payment] through deceit," in which case Racalto may have converted campaign funds to personal use in violation of 52 U.S.C. § 30114 (formerly 2 U.S.C. § 439a).²

The evidence obtained by the Commission indicates that Racalto conducted work on behalf of the Committee related to campaign activities for which he was entitled to some compensation, and the parties agree as to that much.³ Whether the value of that work to the Committee reasonably supports the \$40,000 amount of the payment, however, is sharply disputed and not readily ascertainable from the available evidence. There was no written deferred compensation plan between Racalto and the Committee for his campaign work. And whether an oral agreement existed is a point of conflict among the parties, although the evidence

¹ See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² Compl. at 7.

³ The amount the Committee should pay to Racalto is currently the subject of a pending civil suit between the parties. See *Massa for Congress v. Joseph Racalto*, No. 11-1690CV (N.Y. Sup. Ct. Mar. 4, 2011) (complaint originally filed in Monroe County on Mar. 4, 2011, but venue changed to Steuben County on Nov. 28, 2011).

1 reflects that they discussed at least the possibility of compensation shortly before Racalto sought
2 payment.

3 The Complaint asserted that the Committee's \$40,000 payment to Racalto constituted
4 impermissible personal use of campaign funds — either because it was excessive or obtained
5 through false pretenses. Committees and candidates have latitude to retain services and
6 compensate staff within commercially reasonable bounds, and the available evidence suggests
7 that at least some portion of the payment was legitimate compensation for Racalto's work on the
8 campaign. Additional Commission action relating to the value of Racalto's services would be
9 wasteful and unwarranted, however, particularly because this issue is currently being litigated by
10 the parties. Accordingly, the Commission dismisses the allegation that Joseph Racalto violated
11 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)), and closes the file.⁴

⁴ See *Heckler v. Cheney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (recognizing that dismissal may be warranted due to factors such as the "vagueness or weakness of the evidence").